



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

**75 Hawthorne Street  
San Francisco, CA 94105**

Scott McDonald  
Fennemore Craig, P.C.  
One South Church Avenue, Suite 1000  
Tucson, AZ 95701-1627

Re: Freedom of Information Act Request EPA-R9-2016-009347

Dear Mr. McDonald:

This is in response to your Freedom of Information Act ("FOIA") request regarding:

The May 23, 2008 Determination Regarding Santa Cruz River Reaches, by Colonel Thomas H. Magness, District Engineer for the Army Corps of Engineers, Los Angeles District, that two reaches of the Santa Cruz River, Arizona, are traditional navigable waters.

The most recent set of releasable documents responsive to your FOIA request have been uploaded to EPA's FOIA Online system found at:

<https://foiaonline.regulations.gov/foia/action/public/home>. To access the documents, reference your FOIA request as EPA-R9-2016-009347. EPA is continuing to review potentially responsive documents and expects to upload additional document by date.

Please contact Rich Campbell at (415) 972-3870 should you have any questions concerning this matter.

Sincerely,

Tomás Torres  
EPA Region 9 Water Division Director

Documents withheld in full:

- File named “8-28-08\_Special\_Case\_Strategyv2red.doc” attached to email dated 08/28/2008 2:08 PM from David Smith, EPA R9, to Alexis Strauss, EPA R9, and Jessica Kao, EPA Region 9 (“EPA R9”) attorney, is a redlined draft memorandum entitled “Los Angeles and Santa Cruz Rivers – Special Case Options,” that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication soliciting comment from EPA regional counsel.
- File named “8-28-08\_Special\_Case\_Strategyv2cln.doc” attached to email dated 08/28/2008 2:08 PM from David Smith, EPA R9, to Alexis Strauss, EPA R9, and Jessica Kao, EPA R9, is a draft version of memorandum entitled “Los Angeles and Santa Cruz Rivers – Special Case Options,” that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication soliciting comment from EPA regional counsel.
- File named “cwa.interstatewaters.doc” attached to email dated 03/11/2009 5:06 PM, from David Smith, EPA R9, to Joann Asami, EPA R9 attorney, is a draft untitled memorandum that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication soliciting comment from EPA regional counsel.
- File named “cwa.interstatewaters- dave edits.doc” attached to email dated 03/11/2009 5:06 PM, from David Smith, EPA R9, to Joann Asami, EPA R9 attorney, is a draft untitled redlined memorandum that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication soliciting comment from EPA regional counsel.
- File named “[SCR-LAR Special Case Process dft 91908.doc](#)” attached to email dated 09/19/2008 4:10 PM from Jessica Kao, EPA R9 attorney to David Smith, EPA R9, is a draft memorandum entitled “Santa Cruz River/Los Angeles River Special Case: Proposed Approach” that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and legal counsel, and is an attorney-client communication from EPA legal counsel to staff.
- File named “[SCR TNW letter draft\\_more edits.doc](#)” attached to email dated 11/19/2008 4:11 PM from Jessica Kao, EPA R9 attorney to David Smith, EPA R9, is a redlined draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA, that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication constituting a response from legal counsel to solicitation of advice from EPA R9 staff.
- File named “[SCR TNW letter draft Smith draft 111908.doc](#)” attached to email dated 11/19/2008 4:11 PM from Jessica Kao, EPA R9 attorney to David Smith, EPA R9, is a redlined draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA, that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication constituting a response from legal counsel to solicitation of advice from EPA R9 staff.
- File named “[SCR TNW letter rev11-20.doc](#)” attached to email string beginning with email dated 11/20/2008 9:18 AM from Suzanne Schwartz, EPA, to multiple parties at EPA, is a

redlined draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA, , and also in an email from Jessica Kao, EPA R9 attorney to David Smith, EPA R9, dated 11/20/2008, 11:43 AM, that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication.

- File named "[SCR TNW letter draft\\_more edits.doc](#)" attached to email string beginning with email dated 11/20/2008 9:18 AM from Suzanne Schwartz, EPA, subject line "Fw\_ San Cruz letter2" to multiple parties at EPA, subject line "Fw\_ San Cruz letter2" and also in an email from Jessica Kao, EPA R9 attorney to David Smith, EPA R9, dated 11/20/2008, 11:43 AM, subject line "Fw\_ San Cruz letter3" is a redlined draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA, that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication.
- File named "[SCR TNW letter draft Smith draft 111908.doc](#)" attached to email string beginning with email dated 11/20/2008 9:18 AM from Suzanne Schwartz, EPA, subject line "Fw\_ San Cruz letter2" to multiple parties at EPA, and also in an email from Jessica Kao, EPA R9 attorney to David Smith, EPA R9, dated 11/20/2008, 11:43 AM, subject line "Fw\_ San Cruz letter3" is a redlined draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA, that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication.
- File named "[SCR TNW letter rev11-20.doc](#)" attached to email from Gregory Peck, EPA, to David Smith, EPA R9, subject line "Re: Santa Cruz letter," dated 11/20/2008 12:50 PM, is a redlined draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA, that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication.
- File named "[SCR TNW JK quick draft.doc](#)" attached to email dated 07/30/2008 9:32 PM, from David Smith, EPA R9, to Jessica Kao, EPA R9 attorney, and other Agency staff, is a draft redlined memorandum that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication because it transmits attorney working draft of memorandum to Agency staff.
- File named "[SCR TNW JK quick draft-DWS mark.doc](#)" attached to email dated 07/30/2008 9:32 PM, from David Smith, EPA R9, to Jessica Kao, EPA R9 attorney, and other Agency staff, is a draft redlined memorandum that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication because it transmits attorney working draft of memorandum to Agency staff. *See* FOIA Upload file name "Fw\_Santa Cruz River 2.pdf"
- File named "8-25-08\_Special\_Case\_Options-DWS mark.doc" attached to email dated 08/28/2008 2:08 PM from David Smith, EPA R9, to Jessica Kao, EPA Region 9 attorney, is a redlined draft memorandum entitled "Los Angeles and Santa Cruz Rivers Special Case Options," that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication soliciting comment from EPA regional counsel. *See* FOIA Upload doc named "Fw\_Send to Dave Smith when you send to me.pdf"

- File named “8-25-08\_Special\_Case\_Options.doc” attached to email dated 08/28/2008 2:08 PM from David Smith, EPA R9, to Jessica Kao, EPA R9 attorney, is a draft memorandum entitled “Los Angeles and Santa Cruz Rivers Special Case Options,” that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication soliciting comment from EPA regional counsel. *See* FOIA Upload doc named “Fw\_Send to Dave Smith when you send to me.pdf”
- File named “[SCR TNW letter dft 111708.doc](#)” attached to email dated 11/18/2008 9:54 AM from Alexis Strauss, EPA R9 to Suzanne Schwartz, EPA, is a draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff.
- File named “[8-26-08\\_Special\\_Case\\_Options.doc](#)” attached to email dated 08/26/2008 10:45 AM from David Evans, EPA, to multiple Agency staff, is a draft memorandum entitled “Los Angeles and Santa Cruz Rivers - Special Case Options,” that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff.
- File named “[Background Doc for a2 call.doc](#)” attached to email dated 12/17/2008 4:18 PM from Karyn Wendolowski, EPA, to David Smith, EPA R9, a draft backgrounder memorandum withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and request for legal counsel.
- File named “[Santa Cruz Background Section - 12-30-08-DWS mark.doc](#)” attached to email dated 12/30/2008 11:40 AM from Sam Brown, attorney, EPA R9 to David Smith, EPA R9, and in email from David Smith to Sam Brown dated 01/07/2009 10:39 AM is withheld under FOIA Exemption (b)(5) because it is a draft redlined memorandum reflects internal deliberations of Agency staff and is an attorney-client communication from EPA regional counsel.
- File named “[Santa Cruz Background Section - 12-30-08.doc](#)” attached to email dated 12/30/2008 11:40 AM from Sam Brown, attorney, EPA R9 to David Smith, EPA R9, and in email from David Smith to Sam Brown dated 01/07/2009 10:39 AM, is withheld under FOIA Exemption (b)(5) because it is a draft redlined memorandum that reflects internal deliberations of Agency staff and is an attorney-client communication from EPA regional counsel.
- File named “[Santa Cruz Special Case 1-5-09.doc](#)” attached to email dated 01/07/2009 10:39 AM from David Smith, EPA, to Sam Brown, EPA R9 attorney, is a draft memorandum that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication soliciting comment from EPA regional counsel.
- File named “SCR-LAR Desk Statement dft81608.doc,” a draft desk statement in email dated 08/18/2008 10:21 AM from David Smith, EPA R9, to Sheryl Bilbrey, is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication.
- File named “Ltr to Woodley re LA and Santa Cruz Rivers 08-17-08.pdf” a draft desk statement in email dated 08/18/2008 1:06 PM from Allyn Stern, EPA R9 attorney, to EPA attorneys, is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication.
- File named “[Santa Cruz Memorandum.doc](#)” attached to email dated 12/01/2008 01:51 PM between EPA R9 attorneys is a memorandum is withheld under FOIA Exemption

(b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication.

- File named "[Background Doc for a2 call.doc](#)" attached to email from Dave Smith to Amy Miller dated 12/17/2008 10:50 AM is a draft memorandum withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff.
- File named "[Options for Special Cases.doc](#)" attached to email dated 08/22/2008 02:34 PM from Jessica Kao, EPA R9 attorney to Dave Smith, EPA R9, is a draft untitled memorandum withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication.
- File named "[Options for Special Cases- DWS mark.doc](#)" attached to email dated 08/22/2008 02:34 PM from Jessica Kao, EPA R9 attorney to Dave Smith, EPA R9, is a draft redlined untitled memorandum withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and is an attorney-client communication.
- File named "[SCR TNW letter dft 111708.doc](#)" attached to email dated 11/17/2008 12:05 PM from David Smith, EPA R9, to multiple EPA Staff is a draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff.
- File named "[SCR-LAR Desk Statement dft81608 JKcomments.doc](#)" attached to email dated 08/18/2008 01:07 AM from Jessica Kao, EPA R9 attorney to David Smith, EPA R9, is a draft desk statement that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and legal counsel, and is an attorney-client communication from EPA legal counsel to staff.
- File named "[SCR-LAR Desk Statement dft81608.doc](#)" attached to email dated 08/17/2008 03:40 PM from Dave Smith, EPA R9, to multiple EPA Staff, and email from David Evans, EPA, to Dave Smith, EPA R9, in email dated 08/18/2008 06:18 AM, is a draft desk statement that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and legal counsel, and is an attorney-client communication.
- File named "[Special\\_Case\\_LA\\_River\\_and\\_Santa\\_Cruz- DWS edit 81808.doc](#)" attached to email dated 08/17/2008 03:40 PM EPA R9, to multiple EPA Staff, and email from David Evans, EPA, to Dave Smith, EPA R9, in email dated 08/18/2008 06:18 AM, is a draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff.
- File named "[Clean Version with Edits to Options for Special Cases.doc](#)" attached to email dated 08/25/2008 09:22 AM from David Smith, EPA R9, to multiple Agency staff is a draft memorandum that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication because staff solicits counsel from EPA attorney on working draft.
- File named "[Edits to Options for Special Cases.doc](#)" attached to email dated 08/25/2008 09:22 AM from David Smith, EPA R9, to multiple Agency staff is a draft redlined memorandum that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication because staff solicits counsel from EPA attorney on working draft.
- File named "[Special Case LA River and Santa Cruz.doc](#)" attached to email dated 08/15/2008 01:20 PM from Alexis Strauss, EPA R9, to Laurie Kermish, EPA R9 attorney, is a redlined draft letter to the Assistant

Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA, that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication.

- File named "[8-26-08\\_Special\\_Case\\_Options.doc](#)" attached to email dated 08/26/2008 12:51 PM from David Evans, EPA, to Gregory Peck, EPA, copied to multiple Agency staff, including Agency legal counsel, is a draft memorandum that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication because staff solicits counsel from EPA attorney on working draft.
- File named "[SCR-LAR Special Case Process dft 101408.doc](#)" attached to email dated 10/15/2008 04:52 PM from Laurie Kermish, EPA R9 attorney, to Nancy Marvel, EPA Regional Counsel, is a draft memorandum entitled "Santa Cruz River/Los Angeles River Special case: Proposed Approach" that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication because staff solicits counsel from EPA attorney on working draft.
- File named "[Santa Cruz Partial Determination.ksm.doc](#)" attached to email dated 12/02/2008 10:08 PM from David Smith, EPA R9, to Kevin Minoli, EPA is a draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff.
- File named "[Santa Cruz Partial Determination.dws mark.doc](#)" attached to email dated 12/03/2008 05:46 AM from David Smith, EPA R9, to Kevin Minoli, EPA is a draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff.
- File named "[Santa Cruz Partial Determination.a.2.doc](#)" attached to email dated 12/03/2008 12:03 PM from Hugh Barroll, EPA attorney, to Laurie Kermish and Jessica Kao, EPA Attorneys, is a redlined draft letter to the Assistant Secretary of the Army (Civil Works) from Benjamin Grumbles, EPA, that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff and Agency legal counsel and is an attorney-client communication constituting a response from legal counsel to solicitation of advice from EPA R9 staff.
- File named "[Briefing on Santa Cruz-L.A.\\_T&I Maj\\_10-16-08.doc](#)" attached to email dated 10/27/2008 12:46 PM from Brent Maier, EPA R9, is a redlined draft of memorandum entitled "Summary of Briefing on Santa Cruz/L.A. Jurisdictional Determinations" that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff.
- File named "[Briefing on Santa Cruz-L.A.\\_T&I Maj\\_10-16-08 deedit.doc](#)" attached to email dated 10/27/2008 12:46 PM from Brent Maier, EPA R9, is a draft of memorandum entitled "Summary of Briefing on Santa Cruz/L.A. Jurisdictional Determinations" that is withheld under FOIA Exemption (b)(5) because it reflects internal deliberations of Agency staff.
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